

## **Manual of European Environmental Policy**

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The Manual should be cited as follows:

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# Oil pollution at sea

<b>Formal references</b> <a href="#">OJ C162 8.7.78</a>	Resolution setting up an action programme on control and reduction of pollution caused by hydrocarbons discharged at sea
<a href="#">80/686/EEC</a> (OJ L188 22.7.80)	Commission Decision setting up an Advisory Committee (on oil pollution)
<a href="#">85/208</a> (OJ L 89 29.3.85)	Amendment
<a href="#">87/144</a> (OJ L 57 27.2.87)	Amendment – extending scope of committee
<a href="#">2850/2000/EC</a> (OJ L 322 28.12.00)	Decision setting up a Community framework for cooperation in the field of accidental or deliberate marine pollution
<a href="#">2005/35/EC</a> (OJ L 105, 13.4.2006)	Directive on ship-source pollution and on the introduction of penalties for infringements
<a href="#">Corrigendum</a> (OJ L 33, 4.2.2006)	
<a href="#">Corrigendum</a> (OJ L 105, 13.4.2006)	
<a href="#">2009/123/EC</a> (OJ L 280, 27.10.2009)	Directive amending Directive 2005/35/EC
<b>Legal base</b>	Articles 337 TFEU (originally Article EEC Treaty) and 352 TFEU (originally Article 235 EEC Treaty)
<a href="#">88/346/EEC</a> (OJ L158 25.6.88)	Amendment – extending scope to major inland waters
<b>Legal base</b>	Article 192 TFEU (originally Article 130s EEC Treaty)
<b>Legal base</b>	Article 192 TFEU
<b>Binding dates</b> Submission of information to the Commission	Initially by 10 December 1982 and subsequently in January of each year

*Note:* Decision [86/85/EEC](#) was repealed on 28 December 2000 and replaced by Decision 2850/2000/EC.

## Purpose of Resolution and Decisions

The objective of the programme and subsequent Decisions is to involve the Community in taking appropriate action to prevent and reduce damage from oil and other harmful substances discharged at sea.

# Summary of Resolution, Decisions and Directive

## *Resolution and programme*

The programme provided for the Commission to undertake studies in six areas to see what needed to be done:

1. Computer processing of data on dealing with marine pollution.
2. Availability of data on tankers liable to pollute Community waters.
3. Measures to enhance cooperation and effectiveness of emergency teams.
4. Design and development of clean-up vessels.
5. Amendments and improvements to rules on insurance.
6. Research programme on means of combating oil pollution.

## *Decision 2850/2000/EC*

In December 1981 the Council decided (Decision [81/971/EEC](#)) to set up a Community Information System (CIS) to be run by the Commission. The Decision was replaced in 1986 by Decision 86/85/EEC. This and a subsequent amendment (Decision 88/346/EEC) extended the scope of the CIS. Decision 86/85/EEC was repealed on 28 December 2000 and replaced by Decision 2850/2000/EC, which established a framework for the period 1 January 2000 to 31 December 2006 for cooperation between Member States and the Community to strengthen, support and facilitate efficient mutual assistance and exchange of information on control and reduction of marine pollution. The framework covered the following areas:

- a) A CIS for exchanging data on preparedness for, and response to, accidental and deliberate marine pollution using modern automatic data-processing systems.
- b) The adoption of a three-year rolling plan to implement the framework, to be reviewed annually, which will contain individual actions that contribute to increasing preparedness and preventing risks, improving techniques and methods of response and rehabilitation, providing better public information, strengthening cooperation of local bodies and nature protection bodies, and providing operational support.
- c) A financial framework for the implementation of the Decision for the period 2000 to 2006 set at €7 million.
- d) A mid-term review to evaluate the implementation of the framework to be conducted no less than 36 months after its entry into force; a final review to be conducted no less than 6 years after the Decision's entry into force.

Components of the CIS are set out in Annex I of the Decision. An Internet site is to be established by the Commission to contain the information provided by Member States. A printed loose-leaf booklet is also to be held by the Commission. Within six months of the Decision's entry into force each Member State is to comply with the detailed information requirements set out in Annex I.

The financial arrangements for the Community contribution to the implementation of the framework are set out in Annex II. Actions for which contributions may be made include training and information, improvements to techniques and methods of response and rehabilitation, support and information actions and mobilization of expertise.

### *Directive 2005/35/EC*

Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements entered into force on 1 October 2005. The deadline for implementation was 1 April 2007. The objectives of the Directive are to incorporate international ship-source pollution standards into Community law and to establish penalties (criminal or administrative) to ensure a high level of safety and environmental protection in maritime transport. The Directive must be read in conjunction with Council Framework Decision [2005/667/JHA](#) measure adopted under the so-called ‘third pillar’ of the EU Treaty. The Directive allows Member States to take more stringent measures against ship-source pollution if they wish. The Directive applies to the internal waters (including ports) of a Member State, the territorial sea of a Member State, straits used for international navigation, Member States’ exclusive economic zones or equivalent thereof and the high seas. The Directive applies to discharges of polluting substances from any ship, irrespective of its flag. Warships are however exempted. Member States are expected to recognize any polluting discharge from ships as an infringement, if committed with intent, recklessly or by serious negligence. Any such infringement will be regarded as a criminal offence. Member States may conduct inspections in both ports and off-shore terminals where they suspect pollution is being illegally discharged into the water. In cases where there is clear evidence of ship-source pollution, a Member State may submit the matter to its competent authorities with a view to instituting proceedings. The ship could be detained in accordance with national law, and the consequent penalties should be effective, proportionate and dissuasive. Within the context of this Directive, the Commission, together with the Member States and the European Maritime Safety Agency (EMSA), will work closely together to try and respond to cases of deliberate marine pollution. Directive 2005/35/EC was amended by Directive 2009/123/EC. This clarifies the meaning of infringements, exceptions to these and the liability and penalties to be applied. It had to be transposed by the Member States by 16 November 2010.

## **Development of the programme and Decisions**

Community action was sparked off by the accident to the Amoco Cadiz off the Brittany coast in March 1978. However, the Commission had in the previous year proposed much of the programme in response to the blow-out of oil from an oil platform in the Ekofisk field in Norwegian waters. The subsequent Decisions followed, as well as other proposals concerning port state control of shipping and harmonization of contingency plans. The inclusion of inland waterways within the information system was prompted by an accident at the Sandoz plant at Basle in 1987 which polluted the Rhine. Although more comprehensive legislation was eventually adopted by the Community, the modest scale of Community action adopted at the time reflected the doubts of some Member States about the need for a Community

role in this field. The view had been taken that national and joint contingency plans together with action in wider regional and international organizations provided the better way forward without duplication at Community level. In particular under the Bonn Agreement, the North Sea countries including those outside the Community, had come together to coordinate plans for combating marine pollution problems. The basic IMO convention on oil pollution is the International Convention for the Prevention of Pollution from Ships 1973 and is known as MARPOL.

A Community framework for cooperation in the field of accidental or deliberate marine pollution was established in 2000 by Decision 2850/2000/EC. It replaced, simplified and modernized the EU information system for accidental and deliberate marine pollution set out in Decision 86/85/EEC. This previous Decision served the purpose of making data required for the control and reduction of pollution caused by spillages available to Member States. The Community Framework expired on 31 December 2006 and a Communication on future cooperation beyond 2007 was published in December 2006. The Communication presented the current state of Community action in terms of marine pollution preparedness and response, and indicates how this will be followed up and developed from 2007. Preparedness and response to marine pollution are based on three pillars: the development of preparedness actions, a CIS to facilitate the exchange of information between Member States, and improving the response via the Community civil protection mechanism. The Commission intended to continue and promote its actions in the field of ship-source pollution from 2007 onwards. The EMSA will play an increased role in this field. The Community will make a €154 million financial contribution to the budget of EMSA in the field of response to pollution caused by ships and other associated actions during the period 2007–2013 (Regulation (EC) No [1891/2006](#) and an associated corrigendum ([OJ L30 0302.2007](#)), amending Regulation (EC) No [1406/2002](#)).

## Implementation of the provisions

Information about national transposition measures for Directive 2005/35/EC can be found in the national [execution measures](#) communicated by the Member States and for Directive 2009/123/EC in the following national [execution measures](#).

There has been little overall assessment of the implementation of the provisions relating to oil pollution at sea. However, in 2005 a report<sup>1</sup> was commissioned to evaluate the following:

- The Community action programme in the field of civil protection (Decision 1999/847/EC and Decision [2005/12/EC](#)), where 51 projects had been started and 35 completed (see section on civil protection from disasters).
- The Community framework for cooperation in the field of accidental or deliberate marine pollution (Decision 2850/2000/EC), where 35 projects had been started and 30 completed.

- The Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions (Decision [2001/792/EC](#)) (see section on civil protection from disasters).

The evaluation found that all three instruments addressed real problems, were relevant and their objectives were sufficiently broad and inclusive. There was also sufficient coherence between the instruments and potential for overlap was reduced by the coordination of the Commission. The effectiveness and efficiency of the instruments had contributed to better understanding in the Member States, but the geographic spread in the EU was uneven. The report concluded that there was ‘still some way to go in integrating civil protection objectives and marine pollution objectives into other Member States policies and actions. No integration has been found at the level of objectives, but action on the ground has led to changes in approaches at the level of implementation and this is a positive result’.

## **Enforcement and court cases**

On 23 October 2007, the European Court of Justice (ECJ) rendered an important judgement in a dispute between the European Commission and the Council concerning the validity and legal basis of the provisions of Framework Decision 2005/667/JHA (Case [C-440/05](#)). In this case, the Court upheld the Council’s position that the type and level of criminal penalties to be applied in the event of marine pollution offences fall beyond the Community’s sphere of competence.

There have been two cases before the ECJ with regard to Directive 2005/35/EC. The first case concerned a failure of transposition:

- [C-557/08](#) 09/07/2009. This was a judgement against the United Kingdom for failure to transpose Directive 2005/35/EC within the required time period.

The second case concerned a consideration of whether Directive 2005/35/EC was compatible with MARPOL and UNCLOS agreed at the international level, with the Court concluding that the provisions of Directive 2005/35/EC are applicable to the Member States:

- [C-308/06](#) 03/06/2008. The Queen, on the application of International Association of Independent Tanker Owners (Intertanko) and Others v Secretary of State for Transport. This case considered a preliminary ruling from the English Court. In that case it was asked whether a disposition of the Directive was compatible with international treaties, MARPOL and UNCLOS. The Court stated that with regard to MARPOL, the Community is not a Party, so that it cannot affect the validity of Directive 2005/35/EC. The Community is a Party to UNCLOS, but UNCLOS does not establish rules intended to apply directly and immediately to individuals and to confer upon them rights or freedoms capable of being relied upon against States, irrespective of the attitude of the ship’s flag State. It follows that the nature and the broad logic of UNCLOS prevented the ECJ from being able to assess the

validity of a Community measure, including Directive 2005/35/EC, in the light of that Convention.

## **Reference**

1. The European Evaluation Consortium (TEEC) (2005) Global evaluation of the Community Action Programme in the field of Civil Protection, the Community Mechanism to facilitate reinforced cooperation in civil protection assistance interventions and the Marine Pollution framework.